IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY EIGHTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

-

WRIT PETITION NO.625 of 2005

Between:

Soma Srinivasa Reddy S/o.S.Janardhan Reddy,
Keerthi Enclave, Canara Bank Lane, Opp.Old M.L.A Quarters,

10th Street, Narayanguda, Hyderabad.

..... PETITIONER

AND

1 The Superintending Engineer S.R.S.P. Stage-II Circle,
K.C.Camp. Chintaguttu, Warangal.
2 The Executive Engineer, SRSP Stage-II Division NO.2, Warangal.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue any appropriate writ, order or direction more particularly one in the nature of a writ of Mandamus declaring the action of the Respondents in recovering the enhanced seigniorage fee under G.O.Ms.No.217, dated 29.9.2004 in respect of L.S.Agreement No.10/2003-04 dt.29.8.2003 executed between the Petitioner and the Respondents as illegal and void and consequently declare that the petitioner is liable to pay only the seigniorage fee mentioned in L.S.Agreement No.10/2003-04 dt.29.8.2003 in respect of SRSP Stage-II Earth work Ecavation and forming embankment Kakatiya Main Canal from KM 308.0 to KM 309.00 including Construction of structures and pass such other further orders.

Counsel for the Petitioner: MR.A.RAMALINGESWAR RAO

Counsel for the Respondents: GP FOR IRRIGATION & COMMAND AREA DEVELOPMENT

The Court made the following:

ORDER:

The writ petition is filed by special class civil contractor registered with Government of Andhra Pradesh. He is aggrieved by the action of Roads & Buildings Department Engineers in seeking to recover from the bills submitted by the petitioner, the seigniorage fee at enhanced rates as enhanced by Government in notification issued under Section 15(1) of the Mines and Minerals (Regulation and Development) Act, 1957 (for short, the Act) vide G.O.Ms.No.217, dt.29.9.2004.

The petitioner was awarded the work relating to the SRSP Stage-II Earth Work Excavation and forming embankment Kakatiya Main Canal from KM 308.00 to KM 309.00 including construction of structures. A L.S. agreement No.10/2003-04 dated 29.08.2003 was entered into between the petitioner and the Department. Clause 26.17 deals with the payment of seigniorage fee by the contractor. The same reads as under.

26.17 Seigniorage charges:

Seigniorage charges will be recovered from the work bills of the contractor, based on the theoretical requirements of materials at the following rates.

S.No.	Material	Seigniorage
1.2.3. 4.5.6.	SandMetalRR stone for masonryRevetment stoneC.R.S.stoneGarvelly soils	Rs.30.00/cum.Rs.33.00/cum.Rs.33.00/cum. Rs.33.00/cum.Rs.33.00/cum.Rs.13.00/cum.

The rates are liable to be revised and amended from time to time by the State Government, by notification in the "Andhra Pradesh Gazette". If the revised seigniorage fee is more than the above mentioned, the recovery from the contractor's bills is as per revised rates.

The petitioner, there is no dispute; commenced the work and thereafter the Government of Andhra Pradesh, in Industries & Commerce Department in exercise of their powers under sub-section (1) of Section 15 of the Act amended A.P. Minor Minerals Concession Rules, 1966 (for short, the Rules) (in G.O.Ms.No.1172, dt.4.9.1967). By reason of the said amendment in schedules I and II under Rule 10 of the Rules, new rates of seigniorage fee are prescribed and substituted. The rates of seigniorage fee were enhanced. Be it also noted that as per G.O.Ms.No.217, dt.29.9.2004, the enhanced rates came into force with effect from 1.10.2004.

After coming into force of the amendment to the A.P.Minor Minerals Concession Rules with effect from 1.10.2004, it appears, the Engineers of Roads and Buildings Department insisted that the contractor should pay the enhanced seigniorage fee as per G.O.Ms.No.217, dt.29.9.2004 and also made attempts to deduct the enhanced seigniorage fee over and above the earlier rates from the bills submitted by the contractors. The petitioner agreed to condition No.26.17 and hence there is no illegality in collecting the enhanced rates of seigniorage fee as per G.O.Ms.No.217, dt.29.9.2004.

Learned counsel for the petitioner, Sri A. Ramalingeswara Rao, submits that the amendment under Section 15(1) of the Act vide G.O.Ms.No.217, dt.29.9.2004 being prospective with effect from 1.10.2004, the enhanced rates of seigniorage fee cannot be collected from the contractors. Clause 26.17 is a vague clause and therefore cannot be enforced. Alternatively, as the work is estimated by taking into consideration the rates of seigniorage fee as they existed prior to coming into force of G.O.Ms.No.217, dt.29.9.2004 the liability to pay enhanced seigniorage fee is not on the contractor, and therefore enhanced rates cannot be collected or deducted from the bills submitted by the contractors. Alternatively, they also submit that even if clause 26.17 enables the Government to collect enhanced rates of seigniorage fee in respect of work completed prior to 1.10.2004, the Government is not entitled to deduct or collect the enhanced seigniorage fee, prior to coming into force of G.O.Ms.No.217.

Learned Government Pleader for Irrigation Department, Ms.Vedavathi, at the out set, does not dispute that as per G.O.Ms.No.217, dt.29.9.2004 respondents are entitled to collect enhanced rates of seigniorage fee in respect of work or in respect of material extracted and used in the work after 1.10.2004. Therefore, this point need not detain this Court any longer. If there is any stray case where the respondents insisted upon the contractors to pay enhanced rates of seigniorage fee for the work completed from the date of contract till 30.9.2004, the respondents shall have to initiate steps for refunding or adjusting said amount in the other bills.

The core question is two-fold. Whether the Government can press into service clause 26.17 and whether Government can deduct the enhanced seigniorage fee as per G.O.Ms.No.217, dt.29.9.2004 from the bills submitted by the petitioners. Though there is feeble attempt on the part of the learned counsel for the petitioner, the question is squarely covered by a Division Bench of this Court in **R.M.C.Constructions Ltd. V. The Engineer in Chief** (unreported judgment in W.P.No.26040 of 2001, dt.3.3.2003; hereafter called, **RMC Constructions** case).

In **RMC Constructions** case (supra), the contractor was liable to pay seigniorage charges at the rate of 25% CMT. When the contract was in currency, the Government enhanced the rates of seigniorage fee by issuing notification vide G.O.Ms.No.331, dt.21.6.2000. The action of the Government was impugned in the Writ Petition *inter alia* on the ground that G.O.Ms.No.331, dt.21.6.2000 being prospective in nature, the same cannot be applied to the contract entered into by the contractor prior to coming into force of the amendment. Reliance was also placed on the terms of the contract. The Division Bench did not agree with the submission. It was held that the State is entitled to collect seigniorage fee on the minerals extracted and removed from the land and therefore, the rates applicable on the date of extraction of minerals is prevalent rate which has to be paid by the contractor. It is apposite to excerpt the following.

> …In our considered opinion, the submission that levy and collection of the seigniorage charges at the rate of Rs.33/- per CMT would amount to giving retrospective operation to the amended Rules is misconceived. As we have observed hereinabove, the liability to pay the seigniorage fee specified is with reference to the extraction and removal of the minor minerals from the land for the purpose of consumption in any work whatsoever by the consumer. The State shall be entitled to levy and collect such seigniorage fee on the minor minerals extracted and removed from the land in accordance with the prevalent rates specified under

the Rules as on that date of removal or extraction of the minor minerals. That is precisely what has happened in the instant case. The terms and conditions of agreement entered into by and between the parties or such similar arrangement if any made amongst the parties shall have no bearing upon the operation of the statute or statutory Rules as the case may be. The date on which the petitioner entered into an agreement with the respondents is totally irrelevant in our considered opinion for the purposes of levy and collection of the seigniorage fee in accordance with the rates specified under the Rules issued and amended from time to time.

A reading of the dicta, as above, would show that even in the absence of covenant/clause in the contract like clause 26.17 it is permissible for the Government to collect the enhanced rates of seigniorage fee. In this case, clause 26.17 obliges the contractor to pay the seigniorage charges as amended by the State from time to time and also empowers the employer to recover the revised rates of seigniorage fee from the bills of the contractor. It is admitted case of the petitioner that he entered into contract with the Government and such contract includes clause 26.17 which empowers the State to recover the enhanced seigniorage fee from the bills. Reading clause 26.17, this Court is not able to countenance the submission of the learned counsel for the petitioners that it is vague. Clause 26.17 speaks of revised rates of seigniorage fee and publication of amendment in the gazette. The seigniorage fee can be prescribed by the State only in exercise of their powers under Section 15(1) of the Act by duly amending schedule I to A.P.Minor Minerals Concession Rules. In that view of the matter, there is neither vagueness nor confusion in clause 26.17 of agreement. Said clause certainly refers to the revision of seigniorage fee as per the provisions of the Act duly amending A.P.Minor Minerals Concession Rules. Thus, the case of the respondents in seeking to recover enhanced rates of seigniorage fee with effect from 1.10.2004 does not suffer from any vice of illegality. However, as already observed, the Government is entitled to recover enhanced rates of seigniorage fee only with effect from 1.10.2004 that too on the minerals extracted by the contractor after 1.10.2004.

The Writ Petition, with the above observations, is accordingly dismissed.

28.6.2005 **(V.V.S.RAO, J)**

YS/pln

To

1 The Superintending Engineer S.R.S.P. Stage-II Circle,
K.C.Camp. Chintaguttu, Warangal.
2 The Executive Engineer, SRSP Stage-II Division NO.2, Warangal.

3 Two CCs to the Government Pleader for Irrigation and Command Area

Development, High Court Buildings, Hyderabad. (OUT)

4 Two C.D.Copies.